



## STATE OF CONNECTICUT

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**TESTIMONY OF THOMAS J. WELSH  
TO THE JOINT COMMITTEE ON JUDICIARY  
REGARDING SENATE BILL 418**

**AN ACT ADOPTING THE UNIFORM ELECTRONIC MATERIAL ACT AND THE  
UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT**

March 19, 2012

Sen. Coleman, Rep. Fox and Members of the Judiciary Committee:

It is a pleasure to address you today relating to Senate Bill 418 "An Act Adopting The Uniform Electronic Material Act And The Uniform Certificate Of Title For Vessels Act". Although this Act adopts two proposed uniform acts, my testimony and associated Law Revision Commission report relates only to the Uniform Certificate of Title for Vessels Act. A copy of the Law Revision Commission advisory committee report and proposed act that was the basis for this act, as well as an option amendment, have been submitted as part of this testimony for the consideration of the Judiciary Committee.

I am an attorney and a principal of the law firm of Brown & Welsh, P.C. in Meriden, Connecticut. It was my honor to be appointed by Speaker Donovan as a member of the Connecticut Law Revision Commission in November of 2010. I am also the Chair of the Commercial Finance Committee of the Connecticut Bar Association and a member of the American Law Institute, a Fellow of the American College of Commercial Finance Attorneys and hold posts in the American and Connecticut Bar Associations. I thank Rep. O'Neal, as Chairman, and the Law Revision Commission, for appointing Attorney Neal Ossen and me as co-chairs of an Advisory Committee relating to consideration of the adoption of the latest version of the Uniform Certificate of Title for Vessels Act ("UCTOVA") in Connecticut that were adopted last year by the National Conference of Commissioners on Uniform State Laws.

The Advisory Committee was comprised of a wide-ranging group of advisors selected on the basis of their expertise in commercial law and transactions, marine law and marine transactions and consumer matters, as well as representation by the affected state departments, the Department of Motor Vehicles ("DMV"), Department of Energy and Environmental Protection ("DEEP") and the Office of the Secretary of the State, as well as a liaison representative of the United States Coast Guard, the President of the Connecticut Marine Trades Association and a member of the Connecticut Bankers Association. This Advisory

Committee, with the help of the Legislative Commissioner's Office, drafted a report and a proposed act, upon which this Bill is based, as a result of the work of this Committee. The Advisory Committee report and proposed Bill was approved by the Law Revision Commission at a meeting on February 24, 2012.

Connecticut is one of sixteen (16) states in the United States of America with no certificate of title requirement for water vessels. Federal law requires all states, however, to adopt requirements for registering vessels operating in their waters, which have been adopted in Connecticut in Part III of Chapter 268 of the Connecticut General Statutes. The states immediately surrounding Connecticut and Long Island Sound, New York, Massachusetts and Rhode Island, all have certificate of title requirements for vessels within their waters.

As a result of Connecticut not adopting a certificate of title law for vessels, no certificate of prima facie ownership of a vessel exists for owners in Connecticut and perfection of a security interest in a vessel generally must be accomplished by filing a financing statement in the Office of the Secretary of the State under Revised Article 9 of the Uniform Commercial Code. The adoption of a certificate of title requirement in Connecticut will make its laws and practice generally conform to that in the majority of the other states in the United States and to similar requirements for ownership and financing of motor vehicles in the State of Connecticut and nationwide and will remove a perceived disincentive for the industry and for financiers of vessels in Connecticut.

The Advisory Committee met during January and February of 2012 reviewed the text of UCTOVA, as well as pertinent Connecticut statutes, federal regulations, the law of the surrounding states and common law and practice associated with these provisions, and the potential impact on Connecticut consumers, dealers, manufacturers and financiers. The Advisory Committee prepared a proposed draft act that adopted revisions to the model UCTOVA text to incorporate revisions requested by the affected state departments, the Connecticut Marine Trades Association and financiers to conform to Connecticut practice and federal requirements and to reduce adverse impacts upon Connecticut boat owners, dealers, financiers and other affected parties.

The Advisory Committee recommended the adoption of a certificate of title requirement for vessels:

- to provide certification of prima facie ownership of a vessel to owners and secured parties;
- to conform the process for obtaining and perfecting a security interest in a Connecticut vessel to that for motor vehicles and for vessels in the majority of states of the United States;
- to promote the purchase and sale of vessels in Connecticut and to remove a perceived disincentive for additional parties to provide sources of financing for Connecticut vessels; and

- to provide a state titling law that the Coast Guard could potentially approve to allow a security interest perfected under that law to attain the status of a preferred ship mortgage under federal law – also promoting additional sources of financing

A brief summary of the most significant enactment issues in the Advisory Committee report and proposed act follows:

- Vessel certificates of title will be prima facie evidence of ownership of a vessel and perfection of security interests in vessels will be accomplished by an application to place a notation of the lien on the certificate of title – similar to the provisions for ownership and financing of motor vehicles.
- The effective date of the proposed act will be January 1, 2015 to permit the public to become aware of these changes and to allow affected state departments time to publicize these changes and to prepare for implementation.
- Only vessels having Connecticut as their state of principal use and that meet the currently existing requirements of Connecticut law for registration and numbering of vessels will be subject to the new certificate of title requirements. In general, covered vessels will be those that are not federally documented and that either are powered by an engine or that are 19½ feet or greater in length.
- The provisions of the proposed Bill will be phased-in by requiring certificates of title under the act only for vessels with model year 2016 and later and vessels that were formerly federally documented or are coming to Connecticut from other states with a certificate of title requirement – the Advisory Committee report proposed that vessels with model year 2015 and later be covered but the Bill was drafted to provide for these requirements to be in full effect a year later.
- The proposed act requires that owners and insurers place a permanent “title brand” on the certificate of title for a vessel when they are aware that an event or condition has occurred that renders the vessel “hull damaged”<sup>1</sup> and a \$1,000 fine is established for failure to comply.
- The Advisory Committee did not achieve a consensus as to whether the “hull damaged” title brand requirement was workable or should be removed from the Connecticut proposed act, so the provision remained in the proposed act for determination by the General Assembly– however an optional amendment has been included to allow the General Assembly to remove these requirements if it elects to do so while preserving such title brands from other states or as mandated by the Department of Motor Vehicles by regulation.
- Any security interests in covered vessels that are perfected by filing a financing statement prior to the effective date of the act will remain in effect until the earlier of the lapse of the financing statement or January 1, 2018.

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<sup>1</sup> “Hull damaged” is a defined term in UCOTVA, generally requiring compromise to the integrity of the vessel’s hull.

- DMV privacy statutes have been clarified to allow parties to search DMV records for ownership or security interest information on titled vessels.
- The Act permits the issuance of electronic certificates of title by the DMV, similar to the authorization of electronic certificates of title for motor vehicles in Connecticut.

We look forward to your consideration of this Bill and recommend its approval.

The Law Revision Commission and its Advisory Committee would be happy to address any questions or concerns that the Judiciary Committee or any members may have.